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Comcast Forcing Estrella TV -- No. 3 Spanish Broadcaster in the U.S. -- Off the Air Feb. 19

Minority- Owned Estrella TV to Launch Massive Education Campaign Today with Top Hispanic Entertainment Stars to Give Voice to Consumers Furious Over Comcast's Bullying Tactics

Feb 06, 2015, 07:00 ET from Estrella TV (http://www.prnewswire.com/news/estrella+tv)

English

LOS ANGELES, Feb. 6, 2015 /PRNewswire- USNewswire/ - - Despite earning sky- high ratings that surpass competitors Telemundo, Univision, UniMas, and nearly all others in the Spanish-language television space, minority- owned Estrella TV will be forced off the air by cable industry giant Comcast in three major U.S. cities eff ective Feb. 19.

Comcast's decision to force Estrella TV off the air in its Houston, Denver, and Salt Lake City systems comes as Comcast's own Spanish- language network, Telemundo, has seen a growing percentage of its viewership change the channel in favor of Estrella TV. In the media markets where Comcast is forcing the network off its systems, Estrella TV ranks as the number one Spanish network in Salt Lake City beating Univision; number two in Denver beating Telemundo; and number three in Houston beating UniMas. In the Los Angeles media market, Estrella TV is outpacing giant rivals Telemundo and UniMas combined viewership and beats Univision in primetime hours.

"This has been a real- life David versus Goliath battle, with our minority- owned company fi ghting one of the largest companies in America, and armed with a simple message: let the people watch what they want to watch," said Estrella TV Founder and Chairman Jose Liberman. "With Estrella TV now surpassing Telemundo in the Los Angeles market and elsewhere, it is troubling to see Comcast act irresponsibly by putting its own self- serving business interests ahead of a small minority- owned company, and ahead of Comcast's Hispanic customers."

In response to Comcast's actions, Estrella TV has launched a campaign to educate its supporters about the loss of programming choice for Spanish- speaking viewers, and the real reasons behind Comcast's decision to force Estrella TV off its systems. Estrella TV's campaign will reach hundreds of thousands of Hispanic viewers in Denver and Salt Lake City, and more than two million Hispanic viewers in the greater Houston area through its sister Spanish-language radio stations in those markets. The campaign is also utilizing social media channels to reach Hispanic audiences, encouraging them to contact Comcast to demand that Estrella TV remain on its cable line- up in Houston, Denver, and Salt Lake City.

Notable Hispanic entertainment stars have rallied to support Estrella TV in its eff orts to put pressure on Comcast to extend the network's carriage, and are participating in the massive education campaign. Popular personalities including Don Cheto, Noel Torres, Tucanes de Tijuana, Arrolladora Banda El Limon, Luis Coronel, Enrique Gratas, Myrka Dellanos, Julion Alvarez, Banda los Recoditos, and Kevin Ortiz have all joined the education campaign, "No Pierdas Estrella TV," to rally to keep Estrella TV on air.

"I'm calling on Estrella TV viewers across the country to join us in demanding that Comcast carry our network to give Hispanics what they want, which is to keep the programming they love on the air, and that means keeping Estrella TV on air," said Enrique Gratas, award- winning journalist and host of 'Noticiero con Enrique Gratas' on Estrella TV. "Hispanic viewers that love the popular programming Estrella TV provides should join me in contacting Comcast to demand that they keep Estrella TV on the air. Let's ensure that Comcast, which has an unfortunate reputation with customer service as demonstrated in recent news headlines, hears us loud and clear."

In addition to eliminating choice for Hispanic viewers, Comcast's forcing Estrella TV off its systems will negatively impact the Hispanic- owned company and Hispanic communities across the country through the potential loss of middle class jobs (more than 90 percent of Estrella TV's 1,000 employees in production are Hispanic). Estrella TV has attempted to negotiate with Comcast for a long- term carriage deal that would give it the fi nancial stability to retain these middle class jobs as well as to ensure that Spanish- language broadcast viewers have a choice in programming so that the market isn't dominated by foreign- and non-Hispanic- owned giant corporate entities like Telemundo and Univision. Estrella TV, owned by Mexican- Americans, has been a trusted and recognized name in Latino communities, and, through its original progamming, has launched the careers of many popular Spanish- language musicians topping the charts.

Estrella TV is a division of the privately owned Liberman Broadcasting, the country's largest minority- owned Spanish- language broadcaster. The company owns stations in Los Angeles, San Diego, Phoenix, Dallas, Houston, Salt Lake City, Denver, Chicago, New York, and Miami. Estrella TV will continue to attempt to negotiate an agreement with Comcast to keep the network on the air in Houston, Denver, and Salt Lake City beyond Feb. 19. For more information on the campaign to get Estrella TV back on air, visit www.nopierdasestrellatv.com and follow the conversation on social media using #NoQuieroPerderEstrellaTV.

About Estrella TV

Since its 2009 launch, Estrella TV has established itself as a top U.S. Hispanic television network across demos and time periods. The broadcast network has achieved its fast- track success by programming high- quality all- original programs produced in- house featuring well- known stars and popular personalities from the U.S. and Latin America. Estrella TV has built a catalog of more than 7,500 hours of programming now being distributed by the company to broadcasters worldwide. Estrella TV is owned and operated by Liberman Broadcasting, Inc., a leading Spanish- language, minority- owned entertainment company and one of the largest Spanish- language radio and television broadcasters in the U.S., based on both revenues and number of stations. More can be learned about Estrella TV at www.estrellatv.com.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
LIBERMAN BROADCASTING, INC.	)	MB Docket No. 16-121
and	)	
LBI MEDIA, INC.,	)	
Complainants,	)	File No. CSR-8922-P
	)	
vs.	)	
	)	
COMCAST CORPORATION	)	
and	)	
COMCAST CABLE	)	
COMMUNICATIONS, LLC,	)	
Defendants.	)	
	)	

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Federal Communications Commission
Office of the Secretary

EXPERT DECLARATION OF MARK A. ISRAEL

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I. QUALIFICATIONS

1. I am one of four Senior Managing Directors of Compass Lexecon, an economic consulting firm where I have worked since 2006. From August 2000 to June 2006, I served as a full-time member of the faculty at Kellogg School of Management, Northwestern University. I received my Ph.D. in economics from Stanford University in 2001.

2. I specialize in the economics of industrial organization—which is the study of competition in imperfectly competitive markets, including the study of antitrust and regulatory issues—as well as applied econometrics. At Kellogg and Stanford, I taught graduate-level courses covering topics including business strategy, industrial organization economics, and econometrics. My research on these topics has been published in leading economics journals including the *American Economic Review,* the *Rand Journal of Economics,* the *Review of Industrial Organization, Information Economics and Policy,* and *Antitrust Source.*

3. My academic and consulting work has involved a range of industries, including broadcast and cable television, wired and wireless telecommunications, broadband services, airlines, railroads, consumer beverages, financial markets, insurance, pharmaceuticals, and publishing. I have authored expert reports, declarations, and affidavits that have been submitted to and cited by government agencies and federal courts on behalf of various clients. Among these, I have submitted declarations to the Federal Communications Commission ("Commission" or "FCC") regarding competitive issues in broadband, video distribution, programming, and telecommunications and the Commission has cited to these declarations. I have also co-authored a peer-reviewed paper analyzing the evolution of peering and other Internet interconnection agreements.

4. I have testified in U.S. Federal Court and in many regulatory and arbitration

proceedings in the U.S. and around the world, and submitted expert reports, declarations, and affidavits to government agencies and federal courts on behalf of a wide range of clients. Recently, I served as a testifying expert in U.S. Federal Court on behalf of the Plaintiff U.S. Federal Trade Commission (FTC) in the proposed *Sysco/US Foods* merger: The court relied heavily on my report and testimony in deciding to grant an injunction.

5. My full *curriculum vitae*, including prior testimony, is included as Appendix 1. The hourly rate charged by Compass Lexecon for my work on this matter is $1000 per hour. I have no financial interest in the outcome of this case.

II. ASSIGNMENT AND SUMMARY OF CONCLUSIONS

6. I have been asked by counsel for Comcast Corporation on behalf of its subsidiary, Comcast Cable Communications, LLC (together with Comcast Corporation, "Comcast") to assess, from an economic perspective, the claim by Liberman Broadcasting, Inc. and LBI Media, Inc. ("LBI") that Comcast has "discriminated against LBI in the selection, terms, and conditions of carriage of LBI's Spanish language programming network Estrella TV on the basis of affiliation, to the unlawful benefit of Comcast-owned competing Spanish language networks Telemundo and NBC Universo."[1] As part of this analysis, I have been asked to assess whether the report by Dr. Harold Furchtgott-Roth,[2] LBI's economic expert, provides credible economic support for LBI's claims.

7. I focus my analysis on two questions: whether LBI, including the Furchtgott-Roth Report, has established either (1) any inconsistency between Comcast's decision to reject the

[1] Program Carriage Complaint, Before the Federal Communications Commission, *In the Matter of The Liberman Broadcasting, Inc. and LBI Media v. Comcast Corporation and Comcast Cable Communications, LLC* File No. CSR-8922-P, April 8, 2016 ("*Carriage Complaint*").

[2] Expert Report of Harold W. Furchtgott-Roth, April 7, 2016, Appendix to the *Carriage Complaint* ("Furchtgott-Roth Report").

terms sought by LBI for carriage of EstrellaTV and rational business conduct or (2) any significant competition between EstrellaTV and Telemundo or NBC Universo.

8. With respect to issue (1), I analyze whether LBI has presented any evidence that, under the terms sought by LBI, the benefits to Comcast of carrying EstrellaTV are greater than the additional costs to Comcast.[3] Absent such economic evidence demonstrating that the value of EstrellaTV carriage on the proposed terms exceeded the cost to Comcast, the Commission would have no basis to conclude that Comcast acted in a discriminatory fashion; rather the evidence would be consistent with Comcast making a reasonable, good faith business decision in refusing the terms of carriage proposed by LBI for EstrellaTV.

9. With respect to issue (2) above (whether there is significant competition between EstrellaTV and Telemundo or NBC Universo), I analyze the question directly by examining whether the discontinuation of EstrellaTV carriage in the Houston, Denver, and Salt Lake City DMAs had a strong enough effect on Telemundo's or NBC Universo's viewership to be statistically detectable in the Nielsen data on which the industry relies. In addition, I consider whether the differences and similarities between EstrellaTV and Telemundo as well as between EstrellaTV and NBC Universo point to any significant competition between the networks.[4] LBI's claim of discrimination by Comcast requires it to show significant competition between EstrellaTV and Telemundo or NBC Universo; hence, the absence of evidence for such competition argues strongly against this claim.

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[3] *See Comcast v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013) ("*Tennis Channel*") In that case, the DC Circuit Court concluded that: "Without showing any benefit for Comcast from incurring the additional fees for assigning Tennis a more advantageous tier, the Commission has not provided evidence that Comcast discriminated against Tennis on the basis of affiliation." *Id.* at 986.

[4] This analysis helps to inform an economic assessment of whether EstrellaTV and Telemundo or NBC Universo are "similarly situated" from the perspective of viewers and advertisers in light of FCC Rule 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2).

10. I have reached the following conclusions:

- Available evidence supports a conclusion that Comcast's decision to reject the terms sought by LBI for EstrellaTV is based on rational business conduct, apart from any consideration of the effects of EstrellaTV's carriage on Comcast's affiliated networks Telemundo and NBC Universo. Notably, LBI offers no empirical support that the benefits to Comcast of carrying EstrellaTV outweighed the additional costs Comcast would have had to incur if it paid LBI the fees it sought for carriage of EstrellaTV. Dr. Furchtgott-Roth provides a range of statistics and calculations, none of which bear on the central net benefit issue. Nor does LBI offer any other evidence that Comcast would have benefitted from carriage of EstrellaTV on the terms specified by LBI. To the contrary, the available evidence suggests that {[redacted]} further supporting my conclusion that Comcast made a rational business decision that the cost of carriage of EstrellaTV outweighed its benefits.

- LBI and its expert, Dr. Furchtgott-Roth, also fail to provide any credible economic evidence of material competition between EstrellaTV and either Telemundo or NBC Universo to support LBI's allegation that the networks are similarly situated. To the contrary, the economic evidence indicates that Telemundo and NBC Universo would be unlikely to obtain material benefit from Comcast's limiting EstrellaTV's carriage, which implies that Comcast has no incentive to do so. My analysis of Nielsen data shows that there was no statistically measurable effect on Telemundo's and NBC Universo's Nielsen ratings in the Houston, Denver, and Salt Lake City DMAs as a result of Comcast's discontinuation of carriage of EstrellaTV in the DMAs. Other available evidence also fails to show any significant competition between EstrellaTV and either Telemundo or NBC Universo.

11. In the remainder of my declaration, I discuss the bases for my conclusions. My work on this matter is ongoing, and I retain the right to supplement my opinions, based on further analyses of data and documents.

III. THE ECONOMIC EVIDENCE IS CONSISTENT WITH A RATIONAL BUSINESS JUDGMENT BY COMCAST

12. A central issue that I address in this declaration is whether or not LBI's economic expert, Dr. Furchtgott-Roth, has provided any economic evidence to support a claim that Comcast did not make a rational, good faith business judgment (meaning a judgment based on factors other than discrimination against EstrellaTV designed to benefit Telemundo or NBC Universo) in deciding not to carry EstrellaTV on the terms demanded by LBI. I conclude that Dr. Furchtgott-Roth has offered no economic evidence to show that Comcast's decision to reject LBI's terms is inconsistent with reasonable business conduct, based on the costs and benefits to Comcast, absent any consideration of effects on Telemundo or NBC Universo.

13. In negotiating carriage agreements with networks, it is economically rational for MVPDs, including Comcast and other MVPDs, to evaluate both the costs and the benefits of carrying the networks under the proposed terms. A rational MVPD should reject any carriage proposals that fail to benefit the MVPD to an extent that more than covers the cost of carriage, with no need to turn to discriminatory explanations for this behavior. That is, if the price demanded by the network exceeds the benefits to the MVPD, then economics predicts that the MVPD will not carry the network, with no need to turn to motivations based on effects on other

networks owned by the MVPD to explain the decision or, more generally, no need to turn to discriminatory intent. Comcast needed to do such a cost/benefit analysis for EstrellaTV in the fall of 2014, when EstrellaTV elected "retransmission consent" status for three O&O stations in Denver, Houston, and Salt Lake City that had previously been carried on a must carry basis, sought broader carriage for EstrellaTV (including carriage in "white areas" where EstrellaTV was not available over-the-air), and sought financial consideration from Comcast for carriage of EstrellaTV starting in 2015.[5]

14. Dr. Furchtgott-Roth has failed to even analyze the most basic economic questions at issue, whether the value to Comcast of carrying EstrellaTV exceeds the price demanded by LBI. That is a central question under the FCC's program carriage rules and relevant court precedent such as the *Tennis Channel* case.[6] As such, he can offer no informed opinion on whether Comcast made a reasonable business decision when it rejected the terms demanded by LBI from Comcast for carriage of EstrellaTV and has provided no economic basis to conclude that Comcast's decision was motivated by the potential benefit to Comcast's affiliated networks from reduced carriage of EstrellaTV. Below I provide specific criticisms of Dr. Furchtgott-Roth's conclusions and analyses.[7]

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[5] *Carriage Complaint* ¶ 36. Moreover, I understand that EstrellaTV continues to seek financial consideration and broad carriage from Comcast in the current proceeding, where it has demanded that Comcast be ordered to carry EstrellaTV "wherever (i.e., in all DMAs served by Comcast) and however (e.g., standard definition/high definition/carriage in a particular neighborhood, etc.) Comcast carries Telemundo," and that "Comcast should be ordered to compensate Estrella TV to the extent it compensates Telemundo (e.g., Comcast shall pay the same per subscriber amounts to Estrella TV as it pays Telemundo on a market-by-market basis each year)." *Id.* ¶ 83.

[6] See *supra* note 3.

[7] Previous carriage discrimination cases (*e.g.*, *NFL Network v. Comcast*, *TCR Sports Broadcasting Holding, L.L.P. (DBA MASN) v. Comcast*, *The Tennis Channel v. Comcast*, *Herring Broadcasting, Inc. (DBA Wealth TV) v. Bright House Networks et al*, and *GSN v. Cablevision*) benefited from extensive economic analysis provided by economic experts like my colleagues Jonathan Orszag and Janusz

A. Dr. Furchtgott-Roth's Claim That "Estrella TV is available in valuable television markets, particularly with respect to Spanish-language households" is Irrelevant.

15. Dr. Furchtgott-Roth concludes that: "Estrella TV is available in valuable television markets, particularly with respect to Spanish-language households."[8] Hundreds of networks are available in those television markets, yet this does not necessarily mean that they are worth a particular price to Comcast or that Comcast would have an incentive to discriminate against them. Instead, the relevant questions concern the value of EstrellaTV to Comcast within each market (regardless of the universe of markets in which EstrellaTV is available) and the evidence for competition with Telemundo or NBC Universo in that market. Claims that EstrellaTV "is available" in particular markets speak to neither of these issues.

B. Dr. Furchtgott-Roth's Claim That "[p]rogramming with positive ratings is valuable to a cable operator such as Comcast" Provides No Support for LBI's Discrimination Claims.

16. Dr. Furchtgott-Roth similarly claims that "[p]rogramming with positive ratings is valuable to a cable operator such as Comcast."[9] Although it is no doubt true that a network with positive ratings is more valuable than one that has no viewers, this sheds no light on the reasonableness of Comcast's decision to reject LBI's terms. The relevant question in this case is not whether EstrellaTV has any positive value, but whether EstrellaTV provides a net benefit and thus is valuable enough to Comcast to justify the price demanded by LBI. Dr. Furchtgott-Roth does not even attempt to answer that question.

Ordover. The economic analyses played an important role in the Commission's review of these cases. Dr. Furchtgott-Roth's Report does not provide any proper economic analyses of the type provided by experts in previous carriage discrimination cases.

[8] Furchtgott-Roth Report ¶ 12.

[9] Furchtgott-Roth Report ¶ 12.